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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,935	06/08/2001	Hannu T.T. Toivonen	BP101729	8397

466 7590 12/09/2004

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EXAMINER

ZEMAN, MARY K

ART UNIT PAPER NUMBER

1631

DATE MAILED: 12/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/875,935	TOIVONEN ET AL.	
	Examiner	Art Unit	
	Mary K Zeman	1631	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on 20 September 2004. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☒ Newly proposed or amended claim(s) 22-24, 30-34, 39 and 40 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 28-40.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER


11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: The arguments are directed to limitations not entered. If claims 22-24, 30-34, 39 and 40 were to be resubmitted in a new amendment with other claims canceled, they would be allowable- these claims appear to set forth a concrete tangible and useful result, are definite and appear to be free of the prior art. Claims reciting the algorithms presented (claims 41-45) continue to be indefinite as they do not set forth specific method steps, and it is unclear if the code must be as written with the same spacings, capitalizations, and punctuation.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

U.S. Patent and Trademark Office
PTOL-303 (Rev. 9-04)

Advisory Action Before the Filing of an Appeal Brief

Part of Paper No. 1204

Continuation of 2. NOTE: The amendments to claim 22 render at least claim 37 indefinite. Claim 22 limits the function to a maximization function, and claim 37 refers to a minimizing function no longer present in claim 22. New claims 41-48 raise the issue of new matter and new search. The algorithms of claims 41-45 are not all the same as previously filed. For example, claim 42 has an empty "METHOD:" step. Applicant is encouraged to double check all punctuation, special characters, formulae, and algorithms against the originally filed specification. These claims (41-45) would also have rejections under 35 USC 112: the claims recite multiple periods such that it is not clear what falls within one claim. A claim should be a single sentence beginning with a capital letter, ending with a single period. These claims are indefinite as they recite computer algorithms and code which does not clearly and specifically point out the methods to be performed. It is unclear what the metes and bounds of these claims are- does a change in capitalization or spacing change the method? Claims 46-48 contain new limitations not previously searched. Further, claim 47 is incomplete- The end of the claim is "whose nearest marker scores..." It appears a whole phrase is missing. Claims 46-48 would require additional search and consideration as it appears these process steps have not been previously searched or claimed. Claim 48 would require additional rejections under 35 USC 112, 2nd paragraph as the claim is entirely unclear as to what should specifically be done, and how. It is unclear how these limitations modify the method set forth in claim 22, and to what end.


MARY K. ZEMAN
PRIMARY EXAMINER
AUL/31
12/8/04